

# OPEN MEETING ITEM

**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE

## ORIGINAL



ARIZONA CORPORATION COMMISSION

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DATE: FEBRUARY 27, 2007

AZ CORP COMMISSION  
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DOCKET NO: W-01445A-04-0453

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA WATER COMPANY  
(OPINION AND ORDER AMENDING DECISION NO. 67439)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 9, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 13, and 14, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

FEB 27 2007

DOCKETED BY	nr
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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01445A-04-0453

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER AMENDING  
DECISION NO. 67439**

DATE OF HEARING: January 8, 2007  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
IN ATTENDANCE: Mike Gleason, Commissioner  
APPEARANCES: Mr. Robert Geake, Vice President and General Counsel,  
on behalf of Arizona Water Company; and  
Ms. Robin Mitchell, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Commission finds, concludes, and orders that:

\* \* \* \* \*

**FINDINGS OF FACT**

1. In Decision No. 67439 (December 3, 2004) the Arizona Corporation Commission  
("Commission") approved the application of Arizona Water Company ("AWC") for an extension of  
its Certificate of Convenience and Necessity ("Certificate") for its Coolidge system. Decision No.  
67439 required AWC to file, within 365 days of the Decision, a copy of the developer's Certificate  
of Assured Water Supply ("CAWS"), the main extension agreement and the Arizona Department of  
Environmental Quality Certificate of Approval to Construct.

1           2.     On July 19, 2005, AWC filed a "Request for Additional Time to Comply with Filing  
2 Requirement" for Decision No. 67439. AWC requested an additional 365 days, until December 3,  
3 2006, to comply with the Decision. AWC reported that the developer of the requested extension area  
4 experienced unexpected delays in planning and financing its development, but planned to proceed  
5 with the project in late 2006.

6           3.     On July 27, 2005, Commission Utilities Division Staff ("Staff") filed a Memorandum  
7 and recommended approval of the request.

8           4.     By Procedural Order issued August 24, 2005, AWC's request for an extension of time  
9 was granted and AWC was given until December 3, 2006 to meet the compliance requirements.

10          5.     On August 16, 2006, AWC filed a second request for an extension of time until  
11 December 31, 2007, to file a copy of the developer's CAWS, a main extension agreement and a  
12 Certificate of Approval to Construct.

13          6.     On September 1, 2006, by Procedural Order, Staff was ordered to file a response to  
14 AWC's request.

15          7.     On September 1, 2006, Staff filed its response to AWC's request for extension of time  
16 stating that although it had no objection to AWC's request, Staff was concerned about granting  
17 Certificate extensions where there is no current need for service or when a land owner or developer  
18 has no purpose in requesting an extension other than to increase the value of the property. Staff  
19 further stated that it wanted to put AWC on notice that if AWC files for another time extension to  
20 comply with Decision No. 67439, Staff will request that AWC also file a statement from the  
21 developer indicating the reason for the developer's inability to meet the deadlines originally set by  
22 the Commission and accepted by AWC.

23          8.     On November 17, 2006, by Procedural Order, an evidentiary hearing was scheduled to  
24 convene on January 8, 2007 and AWC was directed to file pre-filed testimony in the matter no later  
25 than December 4, 2006.

26          9.     On November 20, 2006, by Procedural Order, the time for the January 8, 2007 hearing  
27 was reset.

28          10.    On November 27, 2006, AWC filed a Motion for a Procedural Order to Extend Filing

1 Date ("Motion") seeking an extension of time to file its pre-filed testimony in this matter.

2 11. On November 29, 2006, by Procedural Order, AWC's request to extend the time to  
3 file its pre-filed testimony was granted, and the time for complying with Decision No. 67439 was  
4 suspended pending Commission action.

5 12. On December 8, 2006, AWC filed pre-filed testimony regarding the developer's  
6 progress in the extension area.

7 13. On December 18, 2006, Commissioner Gleason filed a letter in this docket requesting,  
8 among other things, that AWC provide a map showing the three parcels of land in the extension  
9 application.

10 14. On January 2, 2007, AWC filed a Notice of Filing Compliance Items, related to  
11 Decision No. 67439. The filing included the Certificate of Approval to Construct issued by the  
12 Arizona Department of Environmental Quality ("ADEQ") and a Certificate of Assured Water Supply  
13 for the Verona Development (formerly known as Cole Farms).

14 15. On January 3, 2007, AWC filed a Notice of Filing Requested Items, in response to  
15 Commissioner Gleason's letter. In its Notice, AWC provided three maps showing the three parcels  
16 of land requested under the application. AWC also provided a copy of its Certificate of Publication  
17 illustrating compliance with the July 16, 2004 Procedural Order requiring publication of notice of the  
18 application and a copy of the letter AWC provided to landowners informing them of the application.  
19 AWC's Notice stated that AWC did not receive any written responses from landowners regarding the  
20 extension application.

21 16. On January 8, 2007, a full public hearing was held as scheduled. Staff, AWC and the  
22 developer for the Verona project appeared through counsel and presented evidence and testimony.  
23 Following the hearing, the matter was taken under advisement pending the filing of late-filed exhibits  
24 and the submission of a Recommended Opinion and Order to the Commission.

25 17. In AWC's pre-filed testimony, AWC stated that it filed an application to expand its  
26 Coolidge CC&N after receiving a request for service from property owners in the area. The testimony  
27 stated that AWC received requests for service from Mr. Everett Lee and Omega Management  
28 Services, Inc. ("Omega"). According to the testimony, the Everett Lee request was to provide water

1 utility service for an existing mobile home park. After the Commission approved the application, Mr.  
2 Lee made arrangements with AWC to receive service from a water main being constructed pursuant  
3 to a main extension agreement with Mr. Mark Brinton. Additionally, the testimony stated Omega  
4 requested that AWC provide water utility service to Omega's master planned development known as  
5 Verona.

6 18. According to AWC's pre-filed testimony, the application included the Lee property  
7 located at the South half of Section 12, Township 5 South, Range 8 East, the Brinton property located  
8 in the Northwest Quarter of Section 13, Township 5 South, Range 8 East and the Verona project  
9 located in Sections 6 and 7 of Township 6 South, Range 8 East. The testimony further stated that the  
10 application included Sections 9 and 10 in Township 5 South, Ranges 8 and 9 East, respectively,  
11 because AWC was already providing water service to customers in those sections.

12 19. AWC filed exhibits showing the Commission's approval of a main extension  
13 agreement ("MXA") between AWC and Mr. Brinton dated May 20, 2005, as well as the ADEQ  
14 Certificate of Approval to Construct dated April 7, 2005.

15 20. At hearing, AWC's witness, Mr. Michael Whitehead, Vice President of Engineering,  
16 testified that prior to the hearing AWC filed a copy of the developer's Certificate of Assured Water  
17 Supply, and the ADEQ Certificate of Approval to Construct for the Verona project. He further  
18 testified that he believed that the only remaining compliance item was for AWC to enter into a main  
19 extension agreement for the Verona development.

20 21. At hearing, AWC also called as a witness, Mr. Ronald Smith, President of Omega  
21 Management. Mr. Smith testified that the Verona project will contain approximately 6,500 residential  
22 lots and several commercial parcels. Additionally, he stated that the project will include four  
23 elementary schools and a 60-acre high school site. (Tr. Pg. 36 lines 3-25)

24 22. Mr. Smith further testified that during the land use planning stage, Omega determined  
25 that it was "better off" being in the City of Coolidge, instead of Pinal County, and it began the  
26 annexation application to accomplish that task. He further testified that the pre-annexation agreement  
27 was delayed by more than nine months, due to complications in figuring out how to provide fire  
28 service to the project and how to pay for it. (Tr. Pg. 40, lines 22-25) He also testified that Omega

1 was unable to file for a Certificate of Assured Water Supply until the City of Coolidge approved the  
2 preliminary plat, and that did not happen until June 2006. (Tr. Pg. 41, lines 16-21) Mr. Smith further  
3 stated that given the development climate with the jurisdictional agencies, the agencies are looking  
4 harder at large projects like Verona and he anticipates it will increase the development process from  
5 six to fifteen months.

6 23. Mr. Smith also stated that the development is dependent on having AWC provide it  
7 with water service, as there are no other providers in the area and Omega has already invested \$1.5  
8 million in the project.

9 24. Mr. Smith also testified that Omega and AWC had completed discussions on the  
10 MXA for the Verona project, and they are in complete agreement. He further testified that in regards  
11 to the MXA all that remains to be done is to get the agreement in its final form. (Tr. Pg. 45, lines 4-  
12 9)

13 24. In Staff's Responsive Staff Report, Staff continued to recommend approval of AWC's  
14 request for an extension of time to comply with Decision No. 67439. In its Responsive Staff Report,  
15 Staff stated that after reviewing AWC's pre-filed testimony, Staff continued to support the need for  
16 the extension of time because the developer had made significant progress toward development,  
17 including having the City of Coolidge annex the area and there is a current need in a neighboring  
18 development to receive adequate fire flow from the facilities and plant planned in the extension area.  
19 Additionally, Staff found no indication that AWC or the developer had purposely delayed progress in  
20 the extension area. Further, Staff stated that it could not identify any adverse public impact for  
21 granting the extension of time, but not granting it could result in adverse business consequences for  
22 the developer.

23 25. At hearing, Staff's witness affirmed its support of AWC's request for an extension of  
24 time to comply with Decision No. 67439. Staff further testified that the developer is making progress  
25 towards requiring service from AWC and that the project was "moving slowly, [but] nevertheless  
26 moving."

27 25. Based on the evidence presented that the developer has been able to move through the  
28 annexation process; has committed approximately \$1.5 million to the investment; and there is a

1 current need for facilities and plant in the extension area; Staff found no identifiable adverse public  
2 impact to granting the extension of time and the parties are in complete agreement on the MXA.

3 26. We believe Staff's analysis is reasonable. We find therefore that AWC's request for  
4 an extension of time until December 31, 2007 to comply with Decision No. 67439 should be granted,  
5 under the specific facts and circumstances of this case.

6 **CONCLUSIONS OF LAW**

7 1. AWC is a public service corporation within the meaning of Article XV of the Arizona  
8 Constitution and A.R.S. § 40-281 *et seq.*

9 2. The Commission has jurisdiction over AWC and the subject matter of the application.

10 3. It is reasonable and in the public interest to grant the extension of time for AWC to  
11 comply with Decision No. 67439, as set forth herein.

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**ORDER**

IT IS THEREFORE ORDERED that Decision No. 67439 (December 3, 2004) is hereby modified to order Arizona Water Company to file, no later than December 31, 2007, with the Director of the Commission's Utilities Division, a copy of a fully executed main extension agreement for the Verona project, and to comply with any other remaining requirements from Decision No. 67439 by no later than December 31, 2007.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2007.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_



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